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[Laws in effect as of January 3, 2005]
[Document not affected by Public Laws enacted between
January 3, 2005 and November 8, 2006]
[CITE: 37USC323]

TITLE 37--PAY AND ALLOWANCES OF THE UNIFORMED SERVICES

CHAPTER 5--SPECIAL AND INCENTIVE PAYS

Sec. 323. Special pay: retention incentives for members qualified in a critical military skill **s or assigned to high priority units.**

(a) Retention Bonus Authorized.--An officer or enlisted member of the armed forces ~~who is serving on active duty and~~ **who is serving on active duty in a regular component or in an active status in a reserve component and who** is qualified in a ~~designated critical military skill~~ **critical military skill designated under subsection (b) or accepts an assignment to a high priority unit designated under such subsection** may be paid a retention bonus as provided in this section if—

(1) in the case of an officer, the member executes a written agreement to remain on active duty for at least one year **or to remain in an active status in a reserve component for at least one year;**

(2) in the case of an enlisted member, other than an enlisted member referred to in paragraph (3), the member reenlists or voluntarily extends the member's enlistment for a period of at least one year; or

(3) in the case of an enlisted member serving pursuant to an indefinite reenlistment, the member executes a written agreement to remain on active duty for a period of at least one year **or to remain in an active status in a reserve component for a period of at least one year.**

(b) ~~Designation of Critical Skills~~ **Eligibility Criteria.**

(1) A designated critical military skill referred to in subsection (a) is a military skill designated as critical by the Secretary of Defense, or by the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy.

(2) The Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, may designate a unit as a high priority unit regarding which a retention bonus will be provided to a member of the armed forces who agrees to accept an assignment to the unit under subsection (a).

(c) Payment Methods.--A bonus under this section may be paid in a single lump sum or in periodic installments.

(d) Maximum Bonus Amount.—

(1) A member may enter into an agreement under this section, or reenlist or voluntarily extend the member's enlistment, more than once to receive a bonus under this section. However, a member may not receive a total of more than \$200,000 **(or \$100,000 in the case of a reserve component member)** in payments under this section.

(2) The limitation in paragraph (1) on the total bonus payments that a member may receive under this section does not apply with respect to an officer who is assigned duties as a health care professional.

(e) Certain Members Ineligible.—

(1) A retention bonus may not be provided under subsection (a) to a member of the armed forces who—

(A) has completed more than 25 years of active duty **or service in an active status in a reserve component**; or

(B) will complete the member's twenty-fifth year of active duty **or service in an active status in a reserve component** before the end of the period of active duty for which the bonus is being offered.

~~—(2) The limitations in paragraph (1) do not apply with respect to an officer who is assigned duties as a health care professional during the period of active duty for which the bonus is being offered.~~

(2) The limitations in paragraph (1) do not apply with respect to an officer who, during the period of active duty or service in an active status in a reserve component for which the bonus is being offered, is assigned duties as a health care professional.

(3) The limitations in paragraph (1) do not apply with respect to a member who, during the period of active duty or service in an active status in a reserve component for which the bonus is being offered

(A) is qualified in a skill designated as critical under subsection (b)(1) related to special operations forces; or

(B) is qualified for duty in connection with the supervision, operation, and maintenance of naval nuclear propulsion plants.

(4) The Secretary of Defense, or the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, may waive the limitations in paragraph (1) with respect to a member who, during the period of active duty or service in an active status in a reserve component for which the bonus is being offered, is assigned duties in a skill designated as critical under subsection (b)(1). The authority to grant a waiver under this paragraph may not be delegated below the Under Secretary of Defense for Personnel and Readiness or the Deputy Secretary of the Department of Homeland Security.

(f) Relationship to Other Incentives.--A retention bonus paid under this section is in addition to any other pay and allowances to which a member is entitled.

(g) Repayment of Bonus.—

~~(1) If an officer who has entered into a written agreement under subsection (a) fails to complete the total period of active duty specified in the agreement, or an enlisted member who voluntarily or because of misconduct does not complete the term of enlistment for which a bonus was paid under this section~~ **If a member paid a bonus under this section fails, during the period of service covered by the member's agreement, reenlistment, or voluntary extension of enlistment under subsection (a), to remain qualified in the critical military skill or to satisfy the other eligibility criteria for which the bonus was paid**, the Secretary of Defense, and the Secretary of Homeland Security with respect to members of the Coast Guard when it is not operating as a service in the Navy, may require the member to repay the United States, on a pro rata basis and to the extent that the Secretary determines conditions and circumstances warrant, all sums paid under this section.

(2) An obligation to repay the United States imposed under paragraph (1) is for all purposes a debt owed to the United States.

(3) A discharge in bankruptcy under title 11 that is entered less than 5 years after the termination of a written agreement entered into under subsection (a) does not discharge the member from a debt arising under paragraph (2).

(h) Annual Report.--Not later than February 15 of each year, the Secretary of Defense and the Secretary of Homeland Security shall submit to Congress a report--

(1) analyzing the effect, during the preceding fiscal year, of the provision of bonuses under this section on the retention of ~~members qualified in the critical military skills for which the bonuses were offered~~ **members of the armed forces who were offered a bonus under this section**; and

(2) describing the intentions of the Secretary regarding the continued use of the bonus authority during the current and next fiscal years.

(i) Termination of Bonus Authority.--No bonus may be paid under this section with respect to any reenlistment, or voluntary extension of an enlistment, in the armed forces entered into after **December 31, 2008**, and no agreement under this section may be entered into after that date.

SEC.640.NDAA06, RETENTION BONUS FOR MEMBERS QUALIFIED IN CERTAIN CRITICAL SKILLS OR ASSIGNED TO HIGH PRIORITY UNITS

SEC.611.NDAA08, EXTENSION OF CERTAIN BONUS AND SPECIAL PAY AUTHORITIES FOR RESERVE FORCES

(Added Pub. L. 106-398, Sec. 1 [[div. A], title VI, Sec. 633(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A-157; amended Pub. L. 107-107, div. A, title VI, Sec. 614(d), Dec. 28, 2001, 115 Stat. 1136; Pub. L. 107-296, title XVII, Sec. 1704(c), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 107-314, div. A, title VI, Secs. 614(d), 618, Dec. 2, 2002, 116 Stat. 2568, 2570; Pub. L. 108-136, div. A, title VI, Secs. 614(d), 622, title X, Sec. 1045(b)(1), Nov. 24, 2003, 117 Stat. 1501, 1505, 1612; Pub. L. 108-375, div. A, title VI, Secs. 614(e), 621, title X, Sec. 1084(e)(2), Oct. 28, 2004, 118 Stat. 1948, 1954, 2064.)

Amendments

2004--Subsec. (a). Pub. L. 108-375, Sec. 621, inserted ``other than an enlisted member referred to in paragraph (3),'' after ``enlisted member,'' in par. (2) and added par. (3).

Subsec. (h). Pub. L. 108-375, Sec. 1084(e)(2), substituted ``Secretary of Homeland Security'' for ``Secretary of Transportation'' in introductory provisions.

Subsec. (i). Pub. L. 108-375, Sec. 614(e), substituted ``December 31, 2005'' for ``December 31, 2004''.

2003--Subsec. (a). Pub. L. 108-136, Sec. 1045(b)(1), substituted ``one year'' for ``1 year'' in pars. (1) and (2).

Subsec. (b). Pub. L. 108-136, Sec. 622, struck out ``(1)'' before ``A designated'' and par. (2) which read as follows: ``The Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, shall notify Congress, in advance, of each military skill to be designated by the Secretary as critical for purposes of this section. The notice shall be submitted at least 90 days before any bonus with regard to that

critical skill is offered under subsection (a) and shall include a discussion of the necessity for the bonus, the amount and method of payment of the bonus, and the retention results that the bonus is expected to achieve."

Subsec. (i). Pub. L. 108-136, Sec. 614(d), substituted ``December 31, 2004" for ``December 31, 2003".

2002--Subsec. (b). Pub. L. 107-296 substituted ``of Homeland Security" for ``of Transportation" in pars. (1) and (2).

Subsec. (d). Pub. L. 107-314, Sec. 618(a), designated existing provisions as par. (1) and added par. (2).

Subsec. (e). Pub. L. 107-314, Sec. 618(b), designated existing provisions as par. (1), redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, of par. (1), and added par. (2).

Subsec. (g)(1). Pub. L. 107-296 substituted ``of Homeland Security" for ``of Transportation".

Subsec. (i). Pub. L. 107-314, Sec. 614(d), substituted ``December 31, 2003" for ``December 31, 2002".

2001--Subsec. (i). Pub. L. 107-107 substituted ``December 31, 2002" for ``December 31, 2001".

Effective Date of 2002 Amendment

Amendment by Pub. L. 107-296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107-296, set out as a note under section 101 of Title 10, Armed Forces.

Effective Date

Pub. L. 106-398, Sec. 1 [[div. A], title VI, Sec. 633(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A-158, provided that: ``Section 323 of title 10, United States Code, as added by subsection (a), shall take effect on October 1, 2000."